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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,304	03/01/2004	John S. Murphy	RYLZ 2 00658-1	9303
7590	01/11/2005		EXAMINER	
Jay F. Moldovanyi FAY, SHARPE, FAGAN, MINNICH & McKEE, LLP Seventh Floor 1100 Superior Avenue Cleveland, OH 44114-2518			GREENE, JASON M	
			ART UNIT	PAPER NUMBER
			1724	
DATE MAILED: 01/11/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

10

Office Action Summary	Application N .	Applicant(s)
	10/790,304	MURPHY ET AL.
	Examiner	Art Unit
	Jason M. Greene	1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 October 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12,30-34 and 39-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7,30-34 and 39-44 is/are rejected.
- 7) Claim(s) 8-12 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 01 March 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Pri ority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Response to Amendment

1. The declaration filed on 25 October 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Yung reference. Specifically, the Examiner notes that Exhibits A, B and C were omitted with the filing of the declaration. Therefore, there is insufficient evidence to establish a conception of the invention prior to the effective date of the Yung reference. Additionally, the Examiner also notes that the declaration has not been signed by David DiNunzio. While Applicants state that the inventor is no longer available for signature, Applicants have not shown that the inventor is no longer available. Specifically, Applicants are reminded of MPEP 715.04[R-2], which requires a showing that a joint inventor is unavailable for signature.

Priority

2. The Examiner notes that Applicants have complied with the requirements for receiving the benefit of the filing date of U.S. Patent Application 09/944,731 under 35 U.S.C. 120 since the specification has been amended to contain a reference to the prior application in the first sentence. Specifically, the petition under 37 CFR 1.78(a)(3) is not necessary since the benefit claim was included in the application transmittal letter and

was recognized by the Office as shown by its inclusion on the filing receipt. See MPEP 201.11(III)(D) and 201.11(V).

Terminal Disclaimer

3. The terminal disclaimer filed on 25 October 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 6,712,868 B2 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

4. Applicant's arguments, see page 9, lines 14-21, filed 25 October 2004, with respect to the double patenting rejections of claims 8-12 have been fully considered and are persuasive. The double patenting rejections of claims 8-12 have been withdrawn.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Yung '350.

With regard to claim 1, Yung '350 discloses a canister vacuum cleaner (10) comprising a body (20) defining a suction inlet (not numbered) and an exhaust outlet (not numbered), a suction source (14) contained in said body and located fluidically between said suction inlet and said exhaust outlet, a dirt cup (32) releasably connected to said body, said dirt cup defining a dirt separation chamber and an airstream outlet (84) that releasably mates with said suction inlet when said dirt cup is connected to said body, said dirt separation chamber conformed to impart a rotational flow pattern to an airstream passing therethrough whereby contaminants entrained in said airstream are separated therefrom and deposited in said dirt cup, and a filter (76) located in said dirt separation chamber of said dirt cup in covering relation with said airstream outlet in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

With regard to claim 7, Yung '350 discloses the filter (76) being releasably connected to the dirt cup (32) in Figs. 1-7 and col. 4, lines 27-62.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 in view of Meijer et al.

Yung '350 discloses a first portion (84) of the dirt cup defining said airstream outlet and a second portion (46) of the dirt cup defining an open entrance to the dirt separation chamber, wherein the canister vacuum cleaner includes a hose (22) communicating with said dirt separation chamber of said dirt cup through a hose fitting (92), wherein an outlet of said hose fitting is directed obliquely toward an interior wall (38) of said dirt cup, whereby an airstream entering said dirt separation chamber from said outlet of said hose fitting is directed obliquely at said interior wall of said dirt cup in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

Yung '350 does not disclose the body comprising a cover that is selectively located in covering relation with said open entrance of said dirt cup when said dirt cup is connected to said body, wherein said cover is pivotably connected to a main portion of said body and pivots on an arc between a first position spaced away from said open entrance of said dirt cup and a second position in covering relation with said open entrance of said dirt cup, wherein a hose communicates with said dirt separation chamber of said dirt cup through said movable cover, the canister vacuum cleaner further comprising a hose fitting connected to and extending through said cover, said hose fitting comprising an inlet conduit projecting outwardly away from said cover external to said body and an outlet conduit located adjacent said open entrance of said dirt cup when said dirt cup is connected to said housing and said cover is placed in

covering relation with said open entrance of said dirt cup, wherein said outlet conduit of said hose fitting is directed obliquely toward an interior wall of said dirt cup when said cover is placed in covering relation with said open entrance of said dirt cup whereby an airstream entering said dirt separation chamber from said outlet conduit of said hose fitting is directed obliquely at said interior wall of said dirt cup.

Meijer et al. discloses a similar canister vacuum cleaner including a body (1) comprising a cover (41) that is selectively located in covering relation with an open entrance of a dirt cup (11) when said dirt cup is connected to said body, wherein said cover is pivotably connected to a main portion of said body and pivots on an arc between a first position spaced away from said open entrance of said dirt cup and a second position in covering relation with said open entrance of said dirt cup, wherein a hose (45) communicates with said dirt separation chamber of said dirt cup through said movable cover, the canister vacuum cleaner further comprising a hose fitting (43) connected to and extending through said cover, said hose fitting comprising an inlet conduit projecting outwardly away from said cover external to said body and an outlet conduit located adjacent said open entrance of said dirt cup when said dirt cup is connected to said housing and said cover is placed in covering relation with said open entrance of said dirt cup, wherein said outlet conduit of said hose fitting is directed toward an interior said dirt cup when said cover is placed in covering relation with said open entrance of said dirt cup in Figs. 1-3 and col. 3, line 56 to col. 8, line 20.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the moveable cover of Meijer et al. into the canister

vacuum cleaner of Yung '350 to allow the upper portion of the body and the hose fitting to be pivotably displaced away from the dirt cup to facilitate removal of the dirt cup and to provide additional access to the interior of the body when the vacuum cleaner requires servicing.

9. Claims 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 in view of Meijer et al.

Yung '350 discloses a bagless canister vacuum cleaner (10) comprising a main housing (20) defining an airflow inlet (not numbered), an airflow outlet (not numbered), and a receiver region (not numbered) adapted to receive a dirt cup (32), a suction source (14) located in said housing and operational to establish and maintain an airstream that flows from said airflow inlet to said airflow outlet, a dirt cup (32) releasably coupled to said receiver region of said main housing, said dirt cup comprising, an interior wall (38) defining a dirt separation chamber conformed to impart a rotational flow path to a dirty airstream passing therethrough whereby contaminants are separated from the dirty airstream and deposited in said dirt cup, an open first end in communication with said dirt separation chamber, and an airstream outlet (84) from said dirt separation chamber, said dirt cup releasably coupled to said main housing with said airstream outlet of said dirt cup mated with said airflow inlet of said main housing, a filter assembly (76) releasably connected to said dirt cup and located in said dirt separation chamber, said filter assembly comprising a filter element located in covering relation with said airstream outlet of said dirt cup, and a hose (22) and a hose

fitting (92) interconnected to said hose, said hose fitting comprising a first portion projecting outwardly away from the dirt cup and a second portion projecting into said dirt separation chamber adjacent said open first end of said dirt cup, said second portion directed obliquely toward said interior wall of said dirt cup defining said dirt separation chamber in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

Yung '350 does not disclose the vacuum cleaner comprising a cover connected to said housing, said cover movable between an open position, where said cover is disengaged from said dirt cup, and a closed, operative position where said cover is placed in covering relation with and blocks said open first end of said dirt cup, said cover, when located in said closed, operative position, preventing separation of said dirt cup from said main housing, or the hose fitting interconnecting the hose to the cover, said first portion of said hose fitting projecting outwardly away from said cover.

Meijer discloses a vacuum cleaner comprising a cover (41) connected to a housing (1), said cover movable between an open position, where said cover is disengaged from said dirt cup, and a closed, operative position where said cover is placed in covering relation with and blocks said open first end of said dirt cup, said cover, when located in said closed, operative position, preventing separation of a dirt cup (11) from said main housing, and a hose fitting (43) interconnecting a hose (45) to the cover, a first portion of said hose fitting projecting outwardly away from said cover and a second portion projecting into said dirt cup, wherein said cover includes a handle (79) to facilitate manual movement of the cover between the open and closed positions in Figs. 1-3 and col. 3, line 56 to col. 8, line 20.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the moveable cover of Meijer et al. into the canister vacuum cleaner of Yung '350 to allow the upper portion of the body and the hose fitting to be pivotably displaced away from the dirt cup to facilitate removal of the dirt cup and to provide additional access to the interior of the body when the vacuum cleaner requires servicing.

10. Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 and Meijer et al. as applied to claim 30 above, and further in view of Miyake et al.

Yung '350 discloses the vacuum cleaner comprising a plurality of wheels (26) for movably supporting said main housing (20) and said dirt cup (32) on a support surface when said dirt cup is coupled to said receiver region of said main housing, wherein said dirt cup comprises a handle in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

Yung '350 and Meijer et al. do not disclose at least one of said plurality of wheels connected to the handle of said dirt cup.

Miyake et al. discloses a similar canister vacuum cleaner (120) having one of a plurality of wheel assemblies (186) connected to a dirt cup (123) in Fig. 3 and col. 6, lines 10-62.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the wheel connected to the dirt cup of Miyake into the canister vacuum cleaner of Yung '350 and Meijer et al. to provide direct support

means for the dirt cup to allow the vacuum cleaner to be manufactured without the portion of the body supporting the dirt cup to reduce manufacturing costs, as suggested by Miyake et al. in Fig. 3.

Yung '350, Meijer et al., and Miyake et al. do not disclose the at least one wheel connected to the dirt cup being connected to the handle.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to shift the location of the wheel from the base of the dirt cup to the handle of the dirt cup in the shifting the location of parts without otherwise modifying the operation of the device is merely a choice of design. See *In re Japikse*, 86 USPQ 70.

11. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 in view of Reichow et al.

Yung '350 discloses a bagless vacuum cleaner (10) comprising a body (20), and a dirt cup (32) releasably connected to and selectively separable from said body, said dirt cup comprising a handle (not numbered) in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

Yung '350 does not disclose the dirt cup a having a pour spout.

Reichow et al. discloses a vacuum cleaner having a dirt cup (22) having a pour spout (154) in Fig. 3 and col. 5, line 38 to col. 6, line 6.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the pour spout of Reichow et al. into the dirt cup of Yung '350 to facilitate the removal of the collected dirt from the dirt cup.

12. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 and Reichow et al. as applied to claim 39 above, and further in view of Watson.

Yung '350 and Reichow et al. do not disclose the handle and pour spout being located opposite each other.

Watson teaches locating a pouring spout opposite a handle in Fig. 1 and col. 6, lines 10-12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the opposite spout and handle arrangement of Watson into the dirt cup of Yung '350 and Reichow et al. to provide for easier handling of the dirt cup while emptying the contents.

13. Claims 41 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 and Reichow et al. as applied to claim 39 above, and further in view of Shirayanagi et al.

Yung '350 and Reichow et al. do not disclose the vacuum cleaner comprising a second handle, wherein the second handle is connected to the body or a strap connected to said body, said strap adapted for securing said bagless vacuum cleaner to a body of a user.

Shirayanagi et al. discloses a vacuum cleaner (2) having a handle (not numbered) connected to the body and a strap (84) connected to the body, said strap adapted for securing said bagless vacuum cleaner to a body of a user in Fig. 12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the handle and strap of Shirayanagi et al. into the vacuum cleaner of Yung '350 and Reichow et al. to allow the person using the vacuum cleaner to easily transport it.

14. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 and Reichow et al. as applied to claim 39 above, and further in view of Meijer et al.

Yung '350 and Reichow et al. do not disclose the vacuum cleaner comprising a lid connected to said body and adapted for selectively covering an open end of said dirt cup, and a handle connected to the lid.

Meijer et al. discloses a vacuum cleaner comprising a lid (41) connected to said body and adapted for selectively covering an open end of a dirt cup (11), and a handle (79) connected to the lid in Figs. 1-3 and col. 3, line 56 to col. 8, line 20.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the moveable cover of Meijer et al. into the canister vacuum cleaner of Yung '350 and Reichow et al. to allow the upper portion of the body and the hose fitting to be pivotably displaced away from the dirt cup to facilitate

removal of the dirt cup and to provide additional access to the interior of the body when the vacuum cleaner requires servicing.

15. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yung '350 and Reichow et al. as applied to claim 39 above, and further in view of Miyake et al.

Yung '350 discloses the vacuum cleaner comprising a plurality of wheels (26) connected to the body in Figs. 1-7 and col. 3, line 3 to col. 5, line 59.

Yung '350 and Reichow et al. do not disclose at least one wheel being connected to the dirt cup.

Miyake et al. discloses a similar canister vacuum cleaner (120) having one of a plurality of wheels (186) connected to a dirt cup (123) in Fig. 3 and col. 6, lines 10-62.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the wheel connected to the dirt cup of Miyake into the canister vacuum cleaner of Yung '350 and Reichow et al. to provide direct support means for the dirt cup to allow the vacuum cleaner to be manufactured without the portion of the body supporting the dirt cup to reduce manufacturing costs, as suggested by Miyake et al. in Fig. 3.

Allowable Subject Matter

16. Claims 8-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Greene whose telephone number is (571) 272-1157. The examiner can normally be reached on Monday - Friday (9:00 AM to 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason M. Greene
Examiner
Art Unit 1724

jmg
January 9, 2005

DUANE SMITH
PRIMARY EXAMINER
D. Smith
1-10-04